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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

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JUAN ANGEL MARTINEZ, JR.,

Plaintiff,

v.
JAMES E. TILTON, et al.,

Defendants.

C 07-4684 CRB (PR)

[PROPOSED] ORDER
GRANTING DEFENDANTS'
MOTIONS TO DISMISS AND
FOR SUMMARY JUDGMENT

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Defendants Tilton, Scavetta, Horel, Silva, Vanderhoofven, McGuyer, Enos, Barneburg, Countess, Milligan, and Estes (Defendants) filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) on the grounds that Plaintiff Martinez failed to state any First Amendment claim, and for summary judgment under Federal Rule of Civil Procedure 56 on the grounds that: (1) there is no genuine issue as to any material fact; (2) there was no violation of Plaintiff's First Amendment rights; and (3) Defendants are entitled to qualified immunity because their actions were lawful.

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A. Analysis Concerning the Confiscated Letters.

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Martinez's allegations surrounding three confiscated letters concern the type of form on which he received notification of the confiscation, and whether the confiscation decision was well-founded. An inmate, when his mail is confiscated, is constitutionally entitled to notice of the confiscation decision, and to appeal the decision to a prison official other than the one

1 making the initial confiscation decision. *See Frost v. Symington*, 197 F.3d 348, 353–54 (9th Cir.
 2 1999); *Krug v. Lutz*, 329 F.3d 692, 697–98 (9th Cir. 2003).

3 Here, Martinez admits receiving notification of the confiscation decision; his contentions
 4 about whether this notification must be through a form 128-B or 1819 are irrelevant and do not
 5 address a constitutional harm. Further, the administrative-appeals record attached to Martinez’s
 6 complaint shows that Martinez successfully appealed the confiscation decision to prison officials
 7 other than the initial decisionmakers—indeed, Defendants Vanderhoofven, Barneburg, and Enos
 8 were only named by Martinez because of their involvement in reviewing his administrative
 9 grievances. (*See* compl.)

10 In sum, Martinez fails to state a First Amendment claim concerning the three confiscated
 11 letters, and any claims related to these confiscated letters are dismissed.

12 **B. Analysis Concerning the Point-of-Origin Stamping Policy.**

13 **1. Martinez Fails to Allege a First Amendment Harm.**

14 Martinez’s remaining claim is that his prison’s policy of stamping the pages of outgoing
 15 inmate mail from the Security Housing Unit violates his constitutional rights. Inmates have a
 16 First Amendment right to send mail, *see Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995)
 17 (citing *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989)), but that issue is not before the Court.

18 Martinez never alleges that he cannot send mail; rather, he takes issue with a policy to mark
 19 his mail with a point-of-origin stamp. Martinez does not allege that this stamping process makes
 20 his outgoing correspondence illegible. The Court’s analysis of this issue could well cease here,
 21 as Martinez has apparently failed to make out a First Amendment claim concerning his right to
 22 send mail.

23 **2. The Point-of-Origin Stamping Policy Is Reasonable.**

24 Were the Court to indulge Martinez further and assume the stamping policy infringed on the
 25 First Amendment right to send mail, the evidence proffered by Defendants’ motion for summary
 26 judgment makes clear that the prison’s policy to stamp outgoing inmate mail from the Security
 27 Housing Unit does not violate any First Amendment right.

28 The prison’s stamping policy is concerned with regulating and eradicating prison mail that

1 is intentionally re-directed back into the prison and which, indeed, very directly affects prison
 2 security. (Decl. McGuyer Supp. Defs.' Mot. Summ. J. ¶¶ 5–6.) Therefore, the *Turner*
 3 reasonableness standard must be applied to the point-of-origin stamping policy at issue here. *See*
 4 *Thornburgh*, 490 U.S. at 413. Under *Turner*, the relevant inquiry is whether the regulation is
 5 reasonably related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89 (1987).
 6 Courts apply a four-pronged test to determine whether a prison regulation or policy is reasonably
 7 related to legitimate penological interests: (1) whether there is a valid, rational connection
 8 between the policy and the legitimate governmental interest put forward to justify it; (2) whether
 9 there are alternative means of exercising the right; (3) whether the impact of accommodating the
 10 asserted constitutional right will have a significant negative impact on prison guards, other
 11 inmates, and the allocation of prison resources generally; and (4) whether the policy is an
 12 exaggerated response to the prison's concerns. *Turner*, 482 U.S. at 89–90. These prongs all
 13 favor a finding that the stamping policy at issue is reasonable and constitutional.

14 First, prison officials identified a serious security risk—*intra-prison-gang*
 15 communications—and effectively neutralized the risk with the point-of-origin stamping policy,
 16 which enables prison officials to determine whether inmates are boomeranging their outgoing
 17 mail back into the prison through intermediaries or false return-to-sender addresses. (*See* Decl.
 18 McGuyer Supp. Defs.' Mot. Summ. J.) Thus, the burden is on Martinez to refute the
 19 presumption that the challenged regulation is rationally related to its objective. *Turner*, 482 U.S.
 20 at 89; *Mauro v. Arpaio*, 188 F.3d 1054, 1060 (9th Cir. 1999); *Frost*, 197 F.3d at 357. This he
 21 does not do.

22 Second, Martinez's First Amendment means of correspondence is substantively unaffected
 23 by the point-of-origin stamping policy. The point-of-origin stamps are applied in a clear but non-
 24 invasive manner. (*See* Decl. McGuyer Supp. Defs.' Mot. Summ. J. ¶¶ 6–8.) For instance, the
 25 prison applies red-ink stamps, at a diagonal angle, atop correspondence penned in prison-issued
 26 black ink. The prison also procured self-inking red stamps to reduce possible smear. And
 27 photographs and artwork are only stamped on their back.

28 The third *Turner* prong is met because previous methods used by the prison to stop prison-

1 gang communications were ineffective, leading to creation of the point-of-origin stamping policy.
2 (See Decl. McGuyer Supp. Defs.' Mot. Summ. J. ¶ 5.)

3 Finally, the point-of-origin stamping policy meets the fourth *Turner* prong because there is
4 no ready alternative put forth by Martinez, or imagined by the Court, that can defeat
5 circumvention of inmate-to-inmate correspondence.

6 Because the point-of-origin stamping policy closely relates to a legitimate penological
7 purpose, Defendants are entitled to summary judgment.

8 In sum, Defendants have not infringed on any constitutional right of Martinez's, and they
9 are entitled to dismissal of the claims against them. Alternatively, Defendants are also entitled to
10 summary judgment on the claims against them because the undisputed evidence shows that
11 Martinez has suffered no constitutional violation.

12 IT IS SO ORDERED.

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Dated: _____

16 HONORABLE CHARLES R. BREYER
United States District Judge

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